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Error to Circuit Court, Princess Anne County.

Ejectment by J. L. Ewell against Pinkie E. Brock. Judgment for plaintiff, and defendant brings error. Affirmed.

Thos. W. Shelton, of Norfolk, for plaintiff in error.

R. R. Hicks and Peechie E. Brock, both of Norfolk, for defendant in error.

CONRAD v. ELLISON-HARVEY CO.

March 15, 1917.

[91 S. E. 763.]

1. Master and Servant (§ 80 (13)*)—Discharge—Action for Salary—Question for Jury.—In a discharged bookkeeper's action on the common counts in assumpsit for salary, whether the plaintiff was discharged or quit the service of defendant of his own accord held for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 121, 122.* 9 Va.-W. Va. Enc. Dig. 665.]

2. Appeal and Error (§ 232 (2)*)—Reservation of Grounds of Review—Issues and Proof.—In view of Code 1904, § 3384, authorizing amendments whenever a variance between pleadings and proof develops during the trial, in a discharged bookkeeper's action for salary, where the declaration contained only the common counts in assumpsit and plaintiff offered in evidence his contract covering his original employment of one year, but defendant at the trial made no objection on the ground of variance between the declaration and proof or upon the insufficiency or the inaptness of the evidence to sustain recovery on the common counts, but his sole objection to the admission of the contract being that it was not then in force, defendant cannot on review successfully contend that plaintiff should have declared especially on his contract and its breach, since parties are not permitted to make one objection to evidence in the trial court and another and different one in the appellate court, but are regarded as having waived all objections save those specifically pointed out.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1430, 1431.* 1 Va.-W. Va. Enc. Dig. 561.]

3. Master and Servant (§ 80 (5)*)—Actions for Wages—Contract of Employment.—The original written contract of employment for one year was admissible to show the terms of the original hiring.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 114.* 9 Va.-W. Va. Enc. Dig. 665.]

4. Master and Servant (§ 80 (1)*)—Discharge—Action for Salary—Pleading.—Where a bookkeeper was employed under a written

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

contract for one year and subsequently continued in service for several years thereafter receiving one increase in salary, the appropriate remedy on his discharge was an action on the common counts in assumption.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 107.* 9 Va.-W. Va. Enc. Dig. 665.]

5. Pleading (§ 230*)—Amendments—Statute—Construction.—Code 1904, § 3384, authorizing amendments when a variance between pleadings and proof develops during the trial, is to be construed with liberality by the courts.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 592.* 1 Va.-W. Va. Enc. Dig. 318.]

6. Master and Servant (§ 80 (13*))—Action for Wrongful Discharge—Question for Jury.—As plaintiff after his original employment for the year 1910 continued in the service of defendant without further contract and received one increase of salary, whether he was employed by the month or by the year in 1914, when he left plaintiff's service, held for the jury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 121, 122.* 9 Va.-W. Va. Enc. Dig. 665.]

7. Master and Servant (§ 80 (7*))—Wrongful Discharge—Action for Salary—Evidence—Admissibility.—Plaintiff was entitled to show the circumstances and negotiations under which he began his original term of service, to be considered with the original contract itself in determining the probable intention of the parties to continue in the relation after the first year had expired.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 116.* 9 Va.-W. Va. Enc. Dig. 665.]

8. Master and Servant (§ 9*)—Contract of Employment—Presumption.—The fact of plaintiff's subsequent employment implied some sort of a contract, which depends upon the intention of the parties, and there is a rebuttable presumption that he was again employed for a like term.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 11.* 9 Va.-W. Va. Enc. Dig. 665.]

9. Frauds, Statute of (§ 44 (3*))—Oral Contract of Employment for One Year.—Where a bookkeeper was employed under a written contract for one year and continued from year to year thereafter, his contract for each of the succeeding years was a contract for one year's service to begin and be performed within the year, and consequently was not within the statute of frauds.

[Ed. Note.—For other cases, see Frauds, Statute of, Cent. Dig. § 66.* 6 Va.-W. Va. Enc. Dig. 527.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Law and Equity Court of City of Richmond.

Action by L. A. Conrad against the Ellison-Harvey Company. Judgment for defendant, and plaintiff brings error. Reversed, verdict set aside, and cause remanded for new trial in conformity with the opinion.

J. C. Page, of Richmond, for plaintiff in error.

Jo. Lane & Cary Ellis Stern, of Richmond, for defendant in error.

CITY OF RICHMOND *v.* McCORMACK.

March 15, 1917.

[91 S. E. 767.]

1. Pleading (§ 433 (3)*)—Statute of Jeofails.—A declaration containing a defective statement of a good cause of action is of the class of errors that the statute of jeofails (Code 1904, § 3449) is designed to cure.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1456.* 4 Va.-W. Va. Enc. Dig. 511.]

2. Judgment (§ 263 (2)*)—Motion in Arrest—Defective Pleadings—Surplusage.—In action against city for injury from sidewalk obstruction, the fact that the complaint overstated the city's duty of care in keeping the sidewalk safe was not ground for arresting judgment after verdict for plaintiff where the allegations of fact stated a good cause of action; the allegation of duty being a conclusion of law which might be disregarded as mere surplusage, in view of Code 1904, §§ 3246, 3272, requiring formal defects in pleading to be disregarded.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 469.* 11 Va.-W. Va. Enc. Dig. 222.]

3. Pleading (§ 407*)—Waiver of Defects.—Defendant, by pleading the general issue and going to trial upon the merits, waives technical defects in the complaint.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1360.* 11 Va.-W. Va. Enc. Dig. 233.]

4. Appeal and Error (§ 1039 (4)*)—Harmless Error—Pleadings.—That complaint in a suit against a city for injuries from sidewalk obstructions overstated the city's duty in keeping its sidewalks safe was not injurious to it where its duty was accurately defined by instructions.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4077.* 1 Va.-W. Va. Enc. Dig. 609.]

*For other cases see same topic and KEY-NUMBER in all Key Numbered Digests and Indexes.